

STATE REPORTER
OF
EDUCATION LAW
VOLUME 7

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF MONTANA:

DUANE VANATTA,

Appellant,

v.

No. OSPI 152-88

Decided: Dec. 29, 1988

TRUSTEES, MCCONE COUNTY,
SCHOOL DISTRICT NO. 1,

Respondents.

Appeal from McCone County Superintendent of Schools.

Order by Ed Argenbright, State Superintendent.

PRACTICE AND PROCEDURE, Whether the County Superintendent should have allowed briefing the legal issues which may be present in appeal of dismissal by non-tenured teacher.

Vanatta, Appellant, v.
McCone County Sch. Dist. #1, Respondents
7 Ed Law 210

This is an appeal by a non-tenured teacher, Duane Vanatta. Mr. Vanatta appealed the non-renewal determination made by the trustees of McCone County School District No 1. The appeal was made to the McCone County Superintendent of Schools on May 18, 1988. On or about May 26, 1988, the McCone County Superintendent issued a decision without giving the parties an opportunity to brief the legal issues or an opportunity to hold a factual hearing. The opinion was in the format of a two-paragraph letter. Appellant claims error based on the failure of the County Superintendent to allow for briefing issue. Respondent argues that the Bridger test (Bridger Education Association v. Bridger School District [1984], [209] Mont. [31], ___ P.2d ___, [3 Ed Law 99]) does not give the Appellant the ability to discuss the validity of the reasons given for the teacher's non-renewal. Respondents further assert that the teacher is seeking an expansion of Bridger which this State Superintendent has steadfastly refused to permit.

While this State Superintendent agrees that the Bridger limitations should remain, the County Superintendent should have given the parties an opportunity to brief the legal, as opposed to factual, issues which may be present.

On remand, the County Superintendent should notify the attorneys for both parties and set up a prehearing conference. She should also determine a time frame for the submission of briefs. It is not the opinion of this State Superintendent that a fact finding hearing should be held. Following the submission of briefs and proposed Findings of Fact, Conclusions of Law and Order by the parties, it is anticipated that the County Superintendent can enter an order based on those legal arguments in the proper format.

This State Superintendent specifically rejects Appellant's argument that a fact finding hearing before the County Superintendent is either necessary or mandated. A prehearing conference and briefing schedule, however, should be established and followed on remand.

Based on the foregoing, this matter is remanded to the McCone County Superintendent of Schools to conduct a prehearing with the attorneys for the submission of briefs strictly limited to the legal issues presented.

DATED this 29th day of December, 1988.

s/Ed Argenbright
State Superintendent